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FM AMEMBASSY THE HAGUE  
TO RUEHC/SECSTATE WASHDC PRIORITY 2807  
INFO RUEHGB/AMEMBASSY BAGHDAD PRIORITY 0142  
RUEHLO/AMEMBASSY LONDON PRIORITY 1842  
RUEAIIA/CIA WASHDC PRIORITY  
RUCPDOC/DEPT OF COMMERCE WASHDC PRIORITY  
RHEBAAA/DEPT OF ENERGY WASHDC PRIORITY  
RUEKJCS/SECDEF WASHINGTON DC PRIORITY  
RHEHNSC/NSC WASHDC PRIORITY  
RUEKJCS/JOINT STAFF WASHDC PRIORITY  
RHMFIISS/DTRA ALEX WASHINGTON DC//OSAC PRIORITY

C O N F I D E N T I A L THE HAGUE 000287

SENSITIVE  
SIPDIS

STATE FOR ISN/CB, VCI/CCA, L/NPV (BROWN),  
SECDEF FOR OSD/GSA/CN, CP>  
SECDEF FOR OSD/GC (WAGER)  
JOINT STAFF FOR DD PMA-A FOR WTC  
NSC FOR LUTES  
WINPAC FOR WALTER

E.O. 12958: DECL: 05/06/2019  
TAGS: [PARM](#) [PREL](#) [CWC](#)  
SUBJECT: CWC: MEETING WITH OPCW LEGAL ADVISER ON U.S.  
RECOVERIES IN IRAQ

REF: A. THE HAGUE 00245  
[1](#)B. STATE 38617

Classified By: Janet E. Beik for reasons 1.4 (B) and (D)

This is CWC-25-09

[11.](#) (C) On April 23, U.S. Executive Council Representative Robert Mikulak and Delreps met with senior Secretariat officials to follow up on the updated U.S. submission on recovered chemical rounds in Iraq. In accordance with REF B instructions, U.S. Delreps had delivered the updated letter to the Director General (DG) and accompanying explanation and table to the DG and senior Secretariat staff on April 20. The primary purpose of the follow-up meeting was to understand the Secretariat's intended response to questions arising from the U.S. submission.

[12.](#) (C) Legal Adviser Santiago Onate said the Secretariat had already been approached by the delegations of Russia, Iran, the Netherlands, Pakistan, and South Africa. Questions included when the recoveries occurred, why the U.S. had not made an Article III declaration, why the U.S. was providing the information at this time, and what the legal consequences would be. Mikulak asked how the Secretariat viewed the letter the U.S. submitted in 2006; Onate replied that this had simply been considered an announcement of further information to be provided at a later date. He added that the TS considered itself to have been made aware of the destruction of recovered rounds through the 2009 submission.

[13.](#) (C) Onate stressed that it was not for the Secretariat to tell delegations whether or not the U.S. had acted in compliance with the CWC, and that any such judgment of compliance lay with the policy making organs. He also noted that he did not intend to engage in speculation with delegations as to when the U.S. "should" have declared. Onate

noted that the Chemical Weapons Convention does not clearly contemplate the possibility of recovering chemical weapons (CW) in a combat situation in a non-member state. In the absence of specific, applicable provisions, it would be up to the U.S. to remind member states that there had been a serious risk of CW falling into the wrong hands; and that U.S. actions of destroying the CW, thereby preventing its use, had been consistent with the goals and spirit of the Convention. He also raised the issue of whether the U.S. had jurisdiction or control of Iraq at the time of the recoveries, and noted that international law is not well defined on this sort of determination.

¶4. (C) Onate shared his view that, for states with concerns about compliance, the most applicable provision of the Convention might be Article IX. However, he noted that pursuit of this particular course requires political will that most member states were unlikely to have, particularly given the aspect of Article IX that envisions the results of consultations being reported back to the Executive Council.

¶5. (C) Finally, the U.S. Representative asked whether the TS plans to review destruction records for the recovered rounds. Director of Verification Horst Reeps replied that this matter still needs to be discussed internally.

¶6. (U) BEIK SENDS.

GALLAGHER